

**Letter of Findings Number: 10-0189P
Individual Income Tax-Penalty
For the Year 2008**

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an individual residing in Indiana. Taxpayer received an annuity distribution. Taxpayer originally received information from one of her advisors that the distribution would be nontaxable. However, Taxpayer later received information from the company that managed the annuity which indicated that a portion of the distribution was taxable. The exact taxable amount was not determined until after the April 15, 2009, deadline.

Taxpayer filed the 2008 individual income tax return upon the determination of the correct taxable amount of the distribution and paid the resulting tax and interest; however, Taxpayer was also assessed a ten percent negligence penalty. Taxpayer protested the penalty, the Indiana Department of Revenue conducted an administrative hearing, and this Letter of Findings results.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to remit the full amount of individual income tax on or before the due date for payment.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has provided sufficient information to conclude that she could not resolve the necessary tax issues related to the distribution until after the April 15, 2009, deadline for filing and remitting Indiana individual income taxes. In addition, Taxpayer has provided information that she attempted to resolve her 2008 income taxes in a timely manner, both before and after the statutory filing and payment deadline. Further, Taxpayer has an excellent compliance record with Indiana. This record further demonstrates reasonable cause because of a consistent history of tax compliance. Based on these factors, Taxpayer demonstrated reasonable cause with regard to her 2008 Indiana individual income tax payment and filing duties; therefore, the protest is sustained.

FINDING

Taxpayer's protest is sustained.

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